

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

DANIEL M. PASKINS, JR.,)	
)	
Petitioner,)	
)	
v.)	Civil Action No. 01-768-SLR
)	
TOM CARROLL, Warden, and)	
ATTORNEY GENERAL OF)	
THE STATE OF DELAWARE,)	
)	
Respondents.)	

MEMORANDUM ORDER

Currently before the court are respondents' motion for leave to file a motion to dismiss and respondents' motion to dismiss petitioner's application for a writ of habeas corpus. (D.I. 10, 11) As explained below, the court concludes that petitioner's application for habeas relief is a second or successive application filed without authorization from the United States Court of Appeals. Accordingly, the court will grant respondents' motions, and will dismiss petitioner's application.

I. BACKGROUND

In June 1994, a jury in the Delaware Superior Court found petitioner Daniel M. Paskins, Jr., guilty of four counts of robbery in the first degree and one count of possession of a deadly weapon during the commission of a felony. The charges were based on a December 4, 1993 robbery of four men at the Renegade Motel in Rehoboth Beach. Petitioner was sentenced to twenty-five years imprisonment followed by a period of probation.

The Delaware Supreme Court affirmed petitioner's conviction and sentence. Paskins v. State, No. 294, 1994, 1995 WL 120665 (Del. Mar. 15, 1995). Petitioner is currently serving his sentence at the Delaware Correctional Center.

In June 1995, petitioner challenged his 1994 conviction by filing an application for federal habeas relief pursuant to 28 U.S.C. § 2254. The court initially informed petitioner that his application was subject to dismissal for failure to exhaust state court remedies because it contained both exhausted and unexhausted claims. Paskins v. Snyder, Civ. A. No. 95-395-SLR (D. Del. Jan. 3, 1996). Petitioner then requested to withdraw his unexhausted claims, and asked the court to rule on his exhausted claims only. The court allowed petitioner to withdraw his unexhausted claims, and denied the petition on the merits of his exhausted claims only. Id. (Mar. 7, 1996).

Petitioner has now filed the current application for federal habeas relief, again seeking to challenge his 1994 conviction. The court instructed respondents to file an answer and the appropriate state court records. (D.I. 6) Instead, respondents have filed a motion for leave to file a motion to dismiss (D.I. 10) in lieu of an answer. Respondents have also filed their motion to dismiss asking the court to dismiss the application because it is a second or successive petition filed without authorization from the Third Circuit. Petitioner has filed an

untimely answer to respondents' motion to dismiss, and asks the court to appoint counsel to represent him. (D.I. 14)

For the reasons that follow, the court agrees with respondents, and will grant their motions and dismiss the petition.

II. DISCUSSION

In the Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA"), Congress established new procedures governing the filing of second or successive habeas petitions. See In re Minarik, 166 F.3d 591, 599 (3d Cir. 1999). Effective April 24, 1996, the AEDPA provides:

Before a second or successive application permitted by this section is filed in the district court, the applicant shall move in the appropriate court of appeals for an order authorizing the district court to consider the application.

28 U.S.C. § 2244(b)(3). According to the Third Circuit, "anyone seeking to file a second or successive petition under 28 U.S.C. § 2254 after April 24, 1996, must move in the appropriate Court of Appeals for an order authorizing the District Court to consider the application," even if the first petition was filed before the enactment of the AEDPA. Minarik, 166 F.3d at 600, 609. Absent authorization from the appropriate court of appeals, a district court lacks jurisdiction to consider a second or successive habeas petition. See Nunez v. United States, 96 F.3d 990, 991 (7th Cir. 1996).

Petitioner's first application for federal habeas relief challenging his 1994 conviction was denied on the merits. His current application is another attempt to challenge that same 1994 conviction in federal court. The court finds that petitioner's current application is a second or successive petition subject to the authorization requirement of § 2244(b)(3). See Christy v. Horn, 115 F.3d 201, 208 (3d Cir. 1997) (stating that a petition is not second or successive if the first petition was dismissed without prejudice). He has not obtained authorization from the Third Circuit to file it. To the extent petitioner argues that the AEDPA does not apply, the Third Circuit has held otherwise. See Minarik, 166 F.3d at 609.

In sum, the court concludes that it lacks jurisdiction to consider petitioner's current application. For this reason, his application will be dismissed. His request for appointment of counsel will be denied as moot.

III. CONCLUSION

Therefore, at Wilmington, this 8th day of May, 2002;

IT IS HEREBY ORDERED that:

- (1) Respondents' motion for leave to file a motion to dismiss in lieu of an answer (D.I. 10) is granted.
- (2) Respondents' motion to dismiss (D.I. 11) is granted.
- (3) Petitioner's application for a writ of habeas corpus (D.I. 2) is dismissed as a second or successive

application filed without authorization from the United States Court of Appeals. See 28 U.S.C. § 2244(b)(3).

- (4) Petitioner's request for appointment of counsel (D.I. 14) is denied as moot.
- (5) The court declines to issue a certificate of appealability because petitioner has failed to make "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2); see Slack v. McDaniel, 529 U.S. 473, 484 (2000).
- (6) The clerk is instructed to forward to petitioner a copy of the Third Circuit's instructions and form for filing a motion for authorization to file a second or successive application for habeas relief.

Sue L. Robinson
United States District Judge